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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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UNITED STATES OF AMERICA,)

4

)

Plaintiff,)

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09:27:42

vs.)

CRIM. NO. 2014-54

6

)

)

7

SHERRYMAE MORALES,)

8

)

Defendant.)

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)

REPORTER'S TRANSCRIPT

10

SENTENCE HEARING

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14:56:13

Thursday, November 12, 2015

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BEFORE: THE HONORABLE CURTIS V. GOMEZ
District Judge

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08:41:56

APPEARANCES: OFFICE OF THE UNITED STATES ATTORNEY
BY: EVERARD POTTER, AUSA
5500 Veterans Drive Suite 260
St. Thomas, Virgin Islands 00802

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For the Government

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OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: OMODARE B. JUPITER, FPD
1115 Strand Street, Suite 201
Christiansted, VI 00820-5073

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For the Defendant

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COURT REPORTER: CHANDRA R. KEAN, RMR
Official Court Reporter
Virgin Islands District Court
St. Thomas, Virgin Islands

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PROCEEDINGS

15:47:42 3 (Court called to order at 3:47 p.m.)

15:47:51 4 THE CLERK: Today's proceeding is sentencing,
15:47:53 5 in the case of United States of America versus Sherrymae
15:47:56 6 Morales, Criminal Number 2014-54.

15:48:02 7 MR. POTTER: Good afternoon, Your Honor.
15:48:03 8 Everard Potter for the United States.

15:48:04 9 THE COURT: Good afternoon, Attorney Potter.

15:48:05 10 MR. POTTER: Good afternoon, Judge.

15:48:07 11 MR. JUPITER: Good afternoon, Your Honor.
15:48:09 12 Omodare Jupiter on behalf of Sherrymae Morales, who is
15:48:13 13 present.

15:48:13 14 THE COURT: Okay. Good afternoon, Attorney
15:48:15 15 Jupiter.

15:48:15 16 We're here for sentencing.

15:48:15 17 OBJECTIONS/CHANGES TO PRESENTENCE REPORT

15:48:17 18 THE COURT: Has counsel received the
15:48:19 19 presentence report in this case?

15:48:20 20 MR. POTTER: The government has, Your Honor.
15:48:21 21 We have no objection to the report.

15:48:23 22 THE COURT: I feel like I almost need a hat in
15:48:25 23 this room. The sun just pours right in.

15:48:33 24 You said you have no changes, no corrections?

15:48:37 25 MR. POTTER: No changes, Your Honor.

15:48:39 1 THE COURT: Attorney Jupiter?

15:48:52 2 MR. JUPITER: Yes, Your Honor. May it please
15:48:53 3 the Court?

15:48:53 4 THE COURT: Yes.

15:48:54 5 MR. JUPITER: With regards to the presentence
15:48:55 6 report, Your Honor -- and I'm looking at the presentence
15:48:58 7 report that's dated August 10th -- I received the
15:49:10 8 presentence report, the addendum, on -- dated
15:49:16 9 October 16th, 2015, so I will proceed.

15:49:20 10 Your Honor, I will point out in the beginning that
15:49:25 11 we -- some of the objections are not objections as far
15:49:27 12 as the accuracy of the trial testimony. We just do not
15:49:32 13 want to concede, I guess, any particular facts that are
15:49:38 14 made in the presentence report, that they are true.

15:49:43 15 So we will distinguish, so the Court doesn't have
15:49:45 16 to go through those. We just want to note we're not
15:49:49 17 conceding any facts. We preserve our right to dispute
15:49:53 18 those facts.

15:49:54 19 THE COURT: All right.

15:49:55 20 MR. JUPITER: With regard to paragraph 6, Your
15:49:58 21 Honor, there's a sentence in there that says, "In 2010,
15:50:02 22 Morales approached the leadership at the VING and
15:50:06 23 expressed an interest in returning to full-time
15:50:08 24 leadership."

15:50:09 25 That was certainly testimony at trial, was

15:50:13 1 accurately reported. We do not concede the truth of
15:50:15 2 that. And I believe the presentence report writer did
15:50:19 3 indicate that Ms. Morales stated that she was approached
15:50:22 4 by them.

15:50:23 5 With regard to paragraph 9, Your Honor, we agree
15:50:31 6 once again that this was testimony at trial.

15:50:33 7 THE COURT: Why don't we do this, Attorney
15:50:35 8 Jupiter.

15:50:37 9 The Court will take it as noted on the record that
15:50:39 10 with respect to the accuracy, you take no issue. With
15:50:44 11 respect to the credibility, though, of the utterance
15:50:46 12 that was made at trial, you reserve your right to
15:50:50 13 challenge the credibility of any utterances made at
15:50:52 14 trial.

15:50:53 15 MR. JUPITER: Thank you, Your Honor.

15:50:54 16 THE COURT: Okay.

15:50:55 17 MR. JUPITER: But actually with paragraph 9 we
15:50:57 18 would ask, we would ask the presentence report writer,
15:51:02 19 with regard to the knowledge of Ms. Morales's rehiring,
15:51:07 20 there was testimony at trial, and we think it should be
15:51:09 21 reflected in the report, that Baron Hignite testified
15:51:13 22 that both Elton Lewis and Linda Cills were both aware of
15:51:18 23 Ms. Morales's rehire by MPSC.

15:51:24 24 And that would be the only addition we would ask
15:51:27 25 that would be placed in there.

15:51:28 1 THE COURT: Okay. Very well.

15:51:33 2 MR. JUPITER: Okay. Your Honor, moving on to
15:51:35 3 paragraph 17. And this is dealing with the Guidelines
15:51:40 4 and the enhancement for amount of loss. And we're not
15:51:44 5 going to repeat all of the arguments we made. We first
15:51:50 6 point out that today is now November 12th, and so we
15:51:53 7 have new Guidelines in effect, that came in effect
15:51:58 8 November 1st.

15:51:59 9 So with regard to even under the government's
15:52:03 10 calculations or Probation's calculations, this would be
15:52:06 11 a 6-level increase instead of an 8-level increase for a
15:52:13 12 loss that would be more than \$40,000 but less than
15:52:16 13 \$95,000.

15:52:16 14 That would make her total offense level a 13, and
15:52:21 15 her Guideline range 12 to 18 months, and she would be in
15:52:26 16 Zone C.

15:52:33 17 THE COURT: You are using which book for that?

15:52:39 18 MR. JUPITER: Well, Your Honor, I get it off
15:52:41 19 line, but it's the November 2015 guidelines changed the
15:52:47 20 loss. I did --

15:52:47 21 THE COURT: It is a plus 6, yes, in the 2015.
15:52:55 22 I'll ask the probation officer if he can get that. I
15:52:58 23 just had that book, 2015 Sentencing Guideline.

15:53:17 24 All right. That's because we used the one book
15:53:22 25 rule, the last book?

15:53:23 1 MR. JUPITER: Yes.

15:53:24 2 THE COURT: What's the government's position on
15:53:25 3 that issue?

15:53:26 4 MR. POTTER: We have no objection to that, Your
15:53:28 5 Honor.

15:53:28 6 THE COURT: That we should be using the 2015 as
15:53:36 7 opposed to the 2014?

15:53:39 8 MR. POTTER: Yes, Judge.

15:53:41 9 MR. JUPITER: So, Your Honor --

15:53:42 10 THE COURT: Now, are the 2015 Guidelines to
15:53:46 11 which you refer, are they the ones that are in effect,
15:53:48 12 or are they the proposed?

15:53:50 13 MR. JUPITER: No, they're in effect now. They
15:53:53 14 came into effect 11 days ago.

15:53:55 15 THE COURT: November 1st.

15:53:58 16 MR. JUPITER: So it's at the time of
15:53:59 17 sentencing. So those Guidelines decrease her total
15:54:03 18 offense level. So that would change paragraphs 17 and
15:54:06 19 21, 24.

15:54:08 20 THE COURT: So 17 would be plus 6, correct?

15:54:11 21 MR. JUPITER: Yes, Your Honor.

15:54:11 22 THE COURT: And that would decrease by 2 the
15:54:13 23 ultimate number. So the adjusted offense level should
15:54:16 24 be 13; is that correct?

15:54:18 25 MR. JUPITER: Correct, Your Honor.

15:54:19 1 THE COURT: And the total offense level also
15:54:21 2 would be 13, correct?

15:54:23 3 MR. JUPITER: Yes, Your Honor.

15:54:24 4 THE COURT: All right. Okay. Go ahead.

15:54:27 5 MR. JUPITER: Does -- do we need to go through
15:54:29 6 every paragraph that that changes?

15:54:31 7 Because the latter -- obviously, the paragraphs
15:54:37 8 49 -- well, actually 50, as well as 55, she was in
15:54:54 9 Zone C rather than D --

15:54:56 10 THE COURT: Not 49. 50, correct?

15:54:58 11 MR. JUPITER: Yes, 50, not 49.

15:55:00 12 THE COURT: Speak into the microphone, please.

15:55:08 13 MR. JUPITER: Guideline range of 12 to
15:55:11 14 18 months. Guideline range of 12 to 18 months.

15:55:19 15 THE COURT: All right. That's in --

15:55:21 16 MR. JUPITER: That's in 50.

15:55:23 17 Then in 55, she would be -- it should say that she
15:55:32 18 is in -- Guideline range is in Zone C of the sentencing
15:55:38 19 table.

15:55:38 20 THE COURT: Right.

15:55:39 21 MR. JUPITER: And that would mean that the
15:55:42 22 Court could impose a sentence that would include, that
15:55:48 23 would substitute half of the time in community -- home
15:55:55 24 detention or community incarceration.

15:56:26 25 THE COURT: Okay. Go ahead.

15:56:27 1 MR. JUPITER: All right. And so now, Your
15:56:29 2 Honor, that would be, if the Court is finding our -- our
15:56:35 3 objection is to all of the loss, as the Court has read
15:56:38 4 in our sentencing memo.

15:56:39 5 We can -- our position is that there is no loss
15:56:45 6 amount here, because of -- we believe the Court should
15:56:53 7 look at this, as there was no -- even if the Court --
15:56:57 8 even though there's been a finding that -- by the jury,
15:57:01 9 by the verdict, that there was an intent to defraud,
15:57:04 10 there is no intent to cause a loss as would be necessary
15:57:07 11 for the government to prove loss under either an after
15:57:12 12 loss theory or an intended loss theory.

15:57:15 13 Our other argument, Your Honor, goes with the
15:57:17 14 commentary for calculating loss and credits against
15:57:24 15 loss.

15:57:24 16 And under commentary 3E of USSG 2B1.1, the credits
15:57:37 17 for loss shall be reduced by the following: The money
15:57:40 18 returned and the fair market value of the property
15:57:46 19 returned, and the services rendered by the defendant to
15:57:48 20 the victim before the offense was detected.

15:57:55 21 This is similar to what we talked about, although
15:57:57 22 we cited the Naegle case in our sentencing memorandum.
15:58:01 23 The Naegle case, as the government points out, they
15:58:05 24 just, they filed the sentencing memorandum today. But
15:58:09 25 while that case dealt with a government benefits

15:58:13 1 program, it still was dealing with contracted services.

15:58:17 2 And this -- and so it's completely analogous. Just
15:58:23 3 because it's a different commentary, it's still the same
15:58:26 4 analogy in terms of when someone is rendering the fair
15:58:30 5 market value of their services in return for -- in
15:58:34 6 return for the benefits that they may have received --

15:58:37 7 THE COURT: Doesn't Naegle counsel that the
15:58:40 8 Court not take sort of a, I don't know, a blanket
15:58:47 9 approach and just say look at the amount received?

15:58:52 10 And what Naegle actually says is that you need to
15:58:55 11 do a little digging down. And if the Court were to
15:59:00 12 engage in that process, couldn't the Court make a
15:59:05 13 reasonable estimate of the amount of loss?

15:59:09 14 That is, if it uses the salary received as a
15:59:12 15 starting point, not as the end point of any loss
15:59:15 16 calculation?

15:59:19 17 That is, I suspect your issue is this: The
15:59:22 18 Probation Office calculates loss as the amount of salary
15:59:25 19 for the period, the period that's charged in the
15:59:28 20 offensive conduct, correct?

15:59:30 21 MR. JUPITER: Well, I think that that's their
15:59:33 22 intent, although I don't think the government -- first
15:59:35 23 of all, this is the government's burden. I don't think
15:59:38 24 they have shown that all of these payments -- I think
15:59:41 25 some -- most of the payments, the testimony at trial, at

15:59:44 1 least the initial testimony, was that these payments
15:59:48 2 were for salary.

15:59:49 3 I don't think that the government has sufficiently
15:59:51 4 proven that all of these payments were just salary. I
15:59:56 5 think that's their burden.

15:59:58 6 But, yes, Your Honor, basically, I think that's the
16:00:02 7 intent of the Probation Office, was that the benefits
16:00:07 8 were salary payments that were the product of the fraud.
16:00:12 9 I think that's their position. We disagree with that
16:00:15 10 position.

16:00:15 11 THE COURT: All right. To the extent there's
16:00:17 12 an offset for services rendered, I take it your position
16:00:20 13 is that the government hasn't given any offset or
16:00:22 14 doesn't concede any offset.

16:00:25 15 MR. JUPITER: That's correct.

16:00:27 16 THE COURT: All right. Okay. Go ahead.

16:00:29 17 MR. JUPITER: Now we only get to it there,
16:00:31 18 after there's the determination that there is a loss.
16:00:33 19 So I think the government has to show that the loss was
16:00:36 20 either loss that Ms. Morales intended to cause, or that
16:00:43 21 this was an actual loss by the victim.

16:00:47 22 There's a couple of issues here. Let's first start
16:00:51 23 off with the fact that we're only talking about -- we're
16:00:55 24 talking about alleged fraudulent conduct that the jury
16:01:02 25 found began while she was already employed and getting

16:01:05 1 paid by the Virgin Islands National Guard.

16:01:08 2 Because, remember, she was acquitted on Counts 1
16:01:11 3 through 14. So this would mean that, you know -- and
16:01:14 4 the government did not even charge anything related to
16:01:20 5 any payments that were made by MPSC.

16:01:27 6 So the government's theory of the case is,
16:01:32 7 regardless of what she did with MPSC, she violated the
16:01:37 8 rules, she violated the rules by getting this other job.

16:01:42 9 I think it's incorrect to say this is -- the
16:01:44 10 government has made out a case of a double dipping
16:01:48 11 scheme, because this is not a case where they say, "Hey,
16:01:51 12 you have one employer and you have two jobs," where
16:01:57 13 someone is double dipping from the same spot.

16:01:59 14 THE COURT: At trial, was there evidence
16:02:02 15 introduced that indicated that time sheets were
16:02:05 16 submitted for two employers for the same period?

16:02:10 17 MR. JUPITER: I think they were admitted over
16:02:12 18 objection of counsel, but I believe -- I'm not a hundred
16:02:18 19 percent sure, but I believe I objected to that for that
16:02:20 20 very same reason, Your Honor, is because the MPSC
16:02:24 21 payments were not part of this, of these charges.

16:02:31 22 So -- but I think they were admitted over defense's
16:02:33 23 objection.

16:02:34 24 THE COURT: All right. Now, assuming for the
16:02:36 25 sake of argument that there are two sets of time sheets

16:02:40 1 covering the same period of time, would you not concede
16:02:44 2 that that, at least on its face, suggests that there was
16:02:48 3 a claim for compensation from two different entities,
16:02:56 4 and to the extent you cannot split yourself, then that
16:03:00 5 would at least suggest that there would be some
16:03:03 6 objectionable conduct?

16:03:07 7 MR. JUPITER: Not when there's no testimony of
16:03:12 8 when she completed -- when she did the work for the
16:03:18 9 uncharged conduct.

16:03:19 10 And that's why I say the uncharged conduct not
16:03:22 11 being at issue in this case is so important, is because
16:03:26 12 there's no dispute about when, regardless of the fact
16:03:32 13 that you type in these codes and you say 8:00 to 5:00,
16:03:38 14 8:00 to 5:00, 8:00 to 5:00 -- which, to me, Your Honor,
16:03:41 15 it's -- I mean, you know, that's, that can mean a lot of
16:03:46 16 things, as there are many of us who have 8:00 to 5:00
16:03:50 17 hours who work 80 hours a week.

16:03:54 18 THE COURT: But the basis for Ms. Morales's
16:03:57 19 salary or claim for salary was a time sheet, correct?

16:04:01 20 MR. JUPITER: No, I don't think the basis for
16:04:03 21 her salary was the time sheet. I don't think there was
16:04:06 22 any -- I don't think that there was any --

16:04:09 23 THE COURT: Well, then, what is the purpose of
16:04:11 24 the time sheet?

16:04:20 25 MR. JUPITER: I think that the time sheet is

16:04:22 1 something that would probably be required to be
16:04:26 2 submitted that was --

16:04:27 3 THE COURT: For what purpose?

16:04:30 4 MR. JUPITER: For job.

16:04:31 5 But I just don't think we can take the next step
16:04:34 6 and --

16:04:34 7 THE COURT: I appreciate the question, but my
16:04:39 8 question is: For what purpose?

16:04:41 9 Why would she submit a time sheet?

16:04:43 10 MR. JUPITER: I think you submit the time sheet
16:04:45 11 because you're required to do so.

16:04:47 12 THE COURT: I understand you're required to do
16:04:48 13 so, but for what purpose? Required to do it for what
16:04:51 14 purpose?

16:04:53 15 MR. JUPITER: To keep your job. To keep your
16:04:55 16 job. Your Honor, I know the Court is -- I'm not trying
16:05:02 17 to split hairs here, but when you have uncharged
16:05:06 18 conduct, this is the problem that you have.

16:05:08 19 Because the issue of what these requirements -- all
16:05:10 20 these different rules that you have to follow are not in
16:05:13 21 issue at trial.

16:05:15 22 And that's problematic when the Court is looking at
16:05:19 23 uncharged payments that, to substantiate whether or not
16:05:26 24 VING was defrauded; not only whether they were
16:05:30 25 defrauded, but whether or not they lost services -- the

16:05:34 1 value of services rendered.

16:05:35 2 Because under their theory, she's getting paid for
16:05:43 3 8:00 to 5:00 by two different people.

16:05:47 4 Well, that's fine when you're, when you are charged
16:05:51 5 with both of those people -- when you are charging both
16:05:54 6 of those people and you're saying: Look, during this
16:05:56 7 time period, this is what she was doing. She was doing
16:05:59 8 this.

16:05:59 9 So who is she defrauding?

16:06:03 10 Who is the victim?

16:06:04 11 There's only one victim here. That is VING. So
16:06:08 12 the only question becomes -- is whether or not she
16:06:10 13 intended any loss, or even rendered any loss, based on
16:06:14 14 her services to VING, not just whether or not she
16:06:17 15 followed the rules for reporting for -- for giving 8:00
16:06:22 16 to 5:00.

16:06:23 17 I don't think -- I think that's a leap that you
16:06:27 18 can't make in a situation when you have the other part
16:06:32 19 of the alleged double dipping not at issue at trial, and
16:06:37 20 you don't have any testimony suggesting that the work
16:06:41 21 that was needed to be done was not performed.

16:06:46 22 THE COURT: All right. Any other objections?

16:06:48 23 You'll get the last word, but I'm going to hear
16:06:50 24 from the government.

16:06:52 25 MR. JUPITER: Your Honor, I -- since it's the

16:06:55 1 government's burden, Your Honor, I'll wait till after
16:06:58 2 they speak to --

16:06:59 3 THE COURT: All right.

16:07:00 4 MR. JUPITER: -- respond.

16:07:02 5 THE COURT: Attorney Potter?

16:07:04 6 MR. POTTER: Thank you, Judge.

16:07:11 7 Your Honor, when the defendant initially came up
16:07:17 8 with a scheme to defraud the Guard and she applied for
16:07:25 9 the position, and she was hired knowing that she was
16:07:29 10 already working a 9:00 to 5:00 job, she intended, when
16:07:36 11 she submitted that application, when she said, "Yes, I
16:07:39 12 am going to take your job at the National Guard," at
16:07:44 13 that point she intended to cause loss, to get moneys for
16:07:51 14 work that she know she would not --

16:07:53 15 THE COURT: But you're slapping a label. My
16:07:55 16 question is: How do you get to the loss amount?

16:07:58 17 What is it that you use to quantify loss in this
16:08:01 18 case?

16:08:02 19 MR. POTTER: The loss amount is the moneys that
16:08:05 20 the National Guard spent, obligated to pay Ms. Morales's
16:08:16 21 salary.

16:08:17 22 THE COURT: Are you saying that there's no need
16:08:19 23 for -- or no offset to which Ms. Morales is entitled?

16:08:25 24 MR. POTTER: We argue that there's no offset,
16:08:27 25 Judge. She obtained --

16:08:28 1 THE COURT: Doesn't the Guideline say there's
16:08:30 2 an offset or credit to which the defendant is entitled
16:08:34 3 for services rendered?

16:08:37 4 MR. POTTER: But, Judge, I don't know that I
16:08:38 5 read --

16:08:39 6 THE COURT: My question is a yes or no, then
16:08:41 7 you can explain.

16:08:42 8 MR. POTTER: I will say no, Judge.

16:08:44 9 THE COURT: You're saying the Guidelines don't
16:08:46 10 say that?

16:08:47 11 MR. POTTER: Not 3E of the Application Notes.
16:08:56 12 I don't think that's what 3E says.

16:09:00 13 It says moneys returned -- well, Ms. Morales was
16:09:03 14 paid for -- I think she received \$90,000 or so from the
16:09:08 15 Virgin Islands National Guard --

16:09:11 16 THE COURT: Doesn't it say at note E:

16:09:13 17 Credits against loss. Loss shall be
16:09:15 18 reduced by the following: The money returned
16:09:17 19 and the fair market value of the property
16:09:18 20 returned and the services rendered by the
16:09:22 21 defendant, or other persons acting jointly
16:09:24 22 with the defendant, to the victim before the
16:09:26 23 offense was detected.

16:09:27 24 Now are you saying that services rendered is not
16:09:29 25 something to be considered?

16:09:31 1 MR. POTTER: Not in that context, Judge.

16:09:32 2 THE COURT: Well, then, what is the purpose of
16:09:35 3 the term "services rendered" in Application Note E?

16:09:41 4 MR. POTTER: I think it has to do with the,
16:09:46 5 where it says "the fair market value of the property
16:09:49 6 returned and the services rendered," I group those
16:09:53 7 together, Judge, that there are certain, maybe things
16:09:59 8 that Ms. Morales -- not Ms. Morales -- but a defendant
16:10:04 9 would have expended in obtaining the contract or in
16:10:08 10 executing the contract and, if, if prior to the
16:10:16 11 detection of the offense, those items are returned --

16:10:20 12 THE COURT: Why are you limiting it to a thing
16:10:24 13 returned?

16:10:24 14 My question was a very specific one. "Services
16:10:27 15 rendered," what does that capture?

16:10:32 16 As I read it, "Loss shall be reduced by the
16:10:35 17 following," and then it lists three categories. The
16:10:37 18 first is money returned, fair market value of the
16:10:40 19 property returned, and services rendered.

16:10:45 20 There are three categories of things that will
16:10:47 21 cause -- or can be the basis for a credit as against any
16:10:52 22 loss.

16:10:54 23 MR. POTTER: Well, my --

16:10:54 24 THE COURT: And you're only considering one
16:10:56 25 thing, if they returned money, as if someone gets some

16:11:00 1 money and chooses to return it. But you're not giving
16:11:02 2 any weight to services rendered.

16:11:04 3 And my question is: What do you -- what is the
16:11:06 4 government's position that the -- with respect to the
16:11:09 5 term "services rendered" and its meaning in the
16:11:14 6 Application Note?

16:11:14 7 MR. POTTER: "Services rendered" is not a
16:11:17 8 clause by itself. It's the fair market value of the
16:11:22 9 property returned and the service rendered. As opposed
16:11:27 10 to, if there's a comma, money returned, comma, fair
16:11:31 11 market value of property returned, comma, and services
16:11:34 12 rendered, services rendered has to do with the value and
16:11:41 13 fair market value of the property returned. I don't
16:11:44 14 think it's an accident that that comma is not there. I
16:11:48 15 think they ought to be read together.

16:11:51 16 So it's two things, the money returned and the fair
16:11:55 17 market value of property returned and services rendered.

16:11:59 18 THE COURT: How can you reconcile that, fair
16:12:02 19 market value of property returned and the services
16:12:04 20 rendered? It's two different types of -- two different
16:12:09 21 species.

16:12:10 22 Fair market value of property. What does that have
16:12:14 23 to do with services rendered?

16:12:22 24 If the government were to give Ms. Morales a car,
16:12:25 25 and she returned the car a year later, or she took a car

16:12:29 1 unlawfully and returned it a year later, it would have
16:12:31 2 been -- some depreciation would have occurred, and the
16:12:34 3 fair market value of it, I think, would have gone down.
16:12:38 4 And if she returned it before her crime were detected,
16:12:41 5 she would be entitled to an offset.

16:12:43 6 What does that have to do with services rendered?

16:12:46 7 MR. POTTER: Well, Judge --

16:12:46 8 THE COURT: Fair market value generally
16:12:49 9 attaches to property, usually tangible things. And fair
16:12:53 10 market value is affected by any number of things, one of
16:12:56 11 which is depreciation.

16:12:59 12 How can that be reconciled with your view that
16:13:02 13 somehow that's tied to services rendered?

16:13:05 14 MR. POTTER: Well, Judge, that's just my
16:13:07 15 interpretation of the statute.

16:13:08 16 THE COURT: Okay. Assuming for the sake of
16:13:10 17 argument that it's three separate categories, then how
16:13:13 18 does it affect your position?

16:13:15 19 That it's money returned, fair market value of
16:13:18 20 property, and services rendered. There are three
16:13:21 21 categories by which you can credit.

16:13:27 22 Does that affect your position?

16:13:29 23 MR. POTTER: Yes, it would, Judge, and clearly
16:13:31 24 that would be something that would be offset.

16:13:37 25 In this case, how that, how those services rendered

16:13:40 1 would be offset, I would submit that when Ms. Morales
16:13:49 2 received her -- she received two payments, Judge, one
16:13:51 3 from MPSC and one from the Virgin Islands National
16:13:55 4 Guard. And the payment, the moneys that she received,
16:13:58 5 basically came from one source, and that would be the
16:14:01 6 National Guard.

16:14:02 7 Because the amount of -- the contract that the MPSC
16:14:08 8 had was a contract that they had with the National
16:14:11 9 Guard. The MPSC-- the National Guard paid the MPSC. In
16:14:16 10 return, the MPSC paid Ms. Morales.

16:14:19 11 So we really have one entity, which is the National
16:14:22 12 Guard, that is spending moneys on Ms. Morales. They
16:14:28 13 intended that they --

16:14:29 14 THE COURT: Well, how can you reconcile that?
16:14:31 15 That is, she was, she had two different employers, did
16:14:36 16 she not?

16:14:37 17 MR. POTTER: She had two different employers,
16:14:39 18 Judge.

16:14:39 19 THE COURT: But didn't you just say, before I
16:14:41 20 asked the question, that it's just the National Guard?
16:14:43 21 She's not employed by just the National Guard. She's
16:14:46 22 employed by MPSC and she's also employed by the V.I.
16:14:51 23 National Guard.

16:14:53 24 MR. POTTER: Yes, Judge.

16:14:53 25 THE COURT: All right.

16:14:54 1 MR. POTTER: I'm just saying that the moneys
16:14:55 2 that the MPSC paid Ms. Morales's salary came from the
16:15:01 3 National Guard. And the National Guard, which is for
16:15:05 4 her ESGR, the National Guard also paid Ms. Morales for
16:15:10 5 her military tech position.

16:15:13 6 THE COURT: You're saying they also paid her as
16:15:15 7 though they are paying her for the MPSC. MPSC, is that
16:15:19 8 a private entity?

16:15:20 9 MR. POTTER: It's a private entity that has a
16:15:22 10 contract with the National Guard.

16:15:24 11 THE COURT: Right. So she didn't go to the
16:15:26 12 National Guard to get the MPSC position, did she?

16:15:30 13 MR. POTTER: No, Judge.

16:15:30 14 THE COURT: So why are you equating the two?

16:15:32 15 It sounds -- when I asked the question, you say
16:15:37 16 you're not, but it sounds like you are. You're
16:15:39 17 suggesting that somehow because the National Guard hires
16:15:41 18 a private entity to provide some services, that somehow
16:15:46 19 anyone who works for that private entity is de facto and
16:15:53 20 by law somehow an employee of the United States.

16:15:58 21 Is that what you're saying?

16:15:59 22 MR. POTTER: That's not my argument, Judge.

16:16:02 23 THE COURT: Okay.

16:16:04 24 MR. POTTER: I think it's simply that the
16:16:07 25 moneys that pays -- that pays Ms. Morales's --

16:16:12 1 THE COURT: If the United States Government
16:16:14 2 hires M&M Mars candy company to provide chocolate bars
16:16:21 3 for members of the military, you're saying that the
16:16:24 4 employees of M&M Mars are somehow employees of the
16:16:28 5 United States Government?

16:16:30 6 MR. POTTER: That's not my argument, Judge.

16:16:32 7 THE COURT: Okay. You're saying that somehow
16:16:36 8 their salary from a private entity is a salary derived
16:16:39 9 or that is sourced from the United States Government?

16:16:44 10 MR. POTTER: Ultimately, that was the
16:16:48 11 originating entity that --

16:16:51 12 THE COURT: All right --

16:16:52 13 MR. POTTER: -- these funds came from, Judge.
16:16:54 14 That's all I'm saying.

16:16:55 15 THE COURT: Okay. Go ahead.

16:16:57 16 MR. POTTER: When Ms. Morales decided to keep
16:17:03 17 both positions, again, she knows, and she knew, that she
16:17:11 18 cannot work 40 hours a week simultaneously for two
16:17:16 19 employers. It's physically impossible to do.

16:17:23 20 And in her accepting the job with the National
16:17:27 21 Guard, she knew that she would not have been able to
16:17:31 22 honestly give the National Guard the eight hours a day,
16:17:37 23 five days a week, 8:00 to 5:00 Monday to Friday,
16:17:42 24 services that she was indicating that she was going to
16:17:46 25 give them, because at the same time she was working

16:17:49 1 Monday through Friday, 8:00 to 5:00, for the MPSC.

16:17:55 2 And it is at that point that the fraud and the
16:17:59 3 intended loss stepped in. And she continued that from,
16:18:12 4 according to the jury's verdict, from August 2010 to
16:18:18 5 June 2011.

16:18:19 6 So for the defense to say that there is no loss,
16:18:23 7 there is a loss, just by the fact that what she proposed
16:18:29 8 to do was an impossibility, and that she knew that it
16:18:34 9 was an impossibility, and yet still she ventured to do
16:18:37 10 it.

16:18:42 11 So we disagree with --

16:18:44 12 THE COURT: Okay. You're not, I think, getting
16:18:46 13 to the core of my question, which is: How do you
16:18:49 14 quantify the loss?

16:18:50 15 Assuming for the sake of argument that Ms. Morales
16:18:54 16 is entitled to a credit, an offset for services
16:18:59 17 rendered, how would you credit that?

16:19:02 18 MR. POTTER: Well, Judge, it might be difficult
16:19:04 19 to calculate, because in truth and in fact, if
16:19:09 20 Ms. Morales is working --

16:19:11 21 THE COURT: Well, why don't we start -- let me
16:19:13 22 ask you this: What is the salary received for that
16:19:16 23 period of time?

16:19:18 24 MR. POTTER: It was approximately \$90,000, Your
16:19:22 25 Honor.

16:19:22 1 THE COURT: All right. And what -- how would
16:19:26 2 you quantify the value of services rendered to offset
16:19:29 3 that?

16:19:32 4 MR. POTTER: Well, because Ms. Morales cannot
16:19:38 5 work a 40-hour week for the National Guard and at the
16:19:42 6 same time work a 40-hour week for the MPSC, it's
16:19:48 7 difficult -- even though we know there is a loss, it may
16:19:51 8 be difficult to calculate how that loss is attributed --
16:19:54 9 what percentage of the loss is attributed strictly to --
16:19:58 10 that is not the National Guard.

16:19:59 11 Our position is that the entire loss --

16:20:01 12 THE COURT: But Attorney, Attorney Potter, I
16:20:04 13 thought that there was evidence adduced during the
16:20:07 14 course of the trial where various witnesses testified
16:20:11 15 about Ms. Morales's work; that is, she was working for
16:20:17 16 the National Guard, was she not?

16:20:19 17 MR. POTTER: Yes, sir.

16:20:19 18 THE COURT: And there was testimony about her
16:20:22 19 work, the quality of her work over that period of time,
16:20:27 20 was there not?

16:20:28 21 MR. POTTER: Yes, Judge.

16:20:29 22 THE COURT: So would it not stand to reason
16:20:32 23 that there were some services that were rendered?

16:20:35 24 MR. POTTER: We would have to concede that
16:20:38 25 there were some services that were rendered.

16:20:41 1 Ms. Morales did in fact do work for the National Guard.

16:20:45 2 THE COURT: And was there any testimony
16:20:47 3 suggesting that there was no service rendered?

16:20:54 4 MR. POTTER: My recollection of the testimony,
16:20:56 5 no one testified that Ms. Morales did not do work.

16:20:59 6 THE COURT: All right. Okay. All right.
16:21:04 7 Anything else?

16:21:06 8 MR. POTTER: Only to the extent, Judge, that
16:21:08 9 whether or not Ms. Morales did work, it is still
16:21:13 10 impossible for her to do 40 hours a week, 5 days, Monday
16:21:20 11 through Friday, for the National Guard and --

16:21:23 12 THE COURT: Now, the evidence that you would
16:21:25 13 point to -- it is your burden -- what would that be?

16:21:28 14 MR. POTTER: Because at the same time she was
16:21:30 15 supposedly working 40 hours a week, Monday through
16:21:34 16 Friday, 9:00 to 5:00, for the MPSC.

16:21:37 17 THE COURT: Right. I know that's your
16:21:41 18 argument. What evidence would you point the Court to,
16:21:43 19 to support that argument?

16:21:44 20 MR. POTTER: Well, the argument from
16:21:46 21 Mr. Hignite, who testified that Morales worked -- that
16:21:50 22 the hours that Morales worked for him, I think in her
16:21:56 23 contract it indicated that if she had need to work
16:21:58 24 outside those regular 9:00 to 5:00, Monday to Friday
16:22:04 25 hours, that she had to come and get authorization from

16:22:06 1 him, and that she never did.

16:22:09 2 So she is in fact working Monday through Friday,
16:22:16 3 9:00 to 5:00, for MPSC, and in fact working Monday
16:22:21 4 through Friday, 9:00 to 5:00, for the National Guard,
16:22:27 5 and she cannot physically do that.

16:22:29 6 THE COURT: All right. So you're saying
16:22:30 7 there's record evidence that indicates that her contract
16:22:35 8 with MPSC was 9:00 to 5:00, and there's exhibits --
16:22:41 9 there are exhibits in the record that indicate that her
16:22:44 10 submission or her time sheets for the National Guard
16:22:47 11 were for a period that overlapped?

16:22:50 12 MR. POTTER: Yes. And additionally, the
16:22:52 13 testimony from the National Guard -- it may have been
16:22:56 14 General Lewis again -- was that Ms. Morales was hired to
16:23:00 15 work Monday through Friday, 9:00 to 5:00; that if he
16:23:05 16 knew that she was working anywhere else during that
16:23:08 17 time, that he would not have permitted it; and
16:23:11 18 specifically that he told her -- that she came to him
16:23:14 19 and indicated to him that this is what she desired to
16:23:17 20 do, and he asked her if she was crazy, that that's not
16:23:20 21 permitted. "You cannot do that."

16:23:22 22 So again, when she did it, she intended to commit
16:23:26 23 fraud and that's what she did.

16:23:27 24 THE COURT: All right. Thank you.

16:23:29 25 Attorney Jupiter, I'll give you the last word on

16:23:31 1 the objection.

16:23:34 2 MR. JUPITER: Your Honor, only with regard to
16:23:36 3 the, what the Court has pointed out with regard to
16:23:40 4 credit, the credit against the loss and fair market
16:23:43 5 value of the services rendered. If the Court were to
16:23:48 6 look at --

16:23:49 7 THE COURT: Well, do you agree with the
16:23:50 8 government that there are only two categories in the
16:23:52 9 credit? That is, is it fair market value of property,
16:23:57 10 and is that a separate thing from services rendered?

16:24:01 11 MR. JUPITER: No, Your Honor, I agree with what
16:24:03 12 the Court said in response to that, that "services
16:24:06 13 rendered" means services rendered by the defendant. The
16:24:09 14 fair market value of the services rendered, which in
16:24:12 15 this instance is, this instance is the job that
16:24:16 16 Ms. Morales was hired by the Virgin Islands National
16:24:19 17 Guard to do, and that by everyone's account, even in the
16:24:23 18 government's opening --

16:24:24 19 THE COURT: So you would agree there are three
16:24:26 20 categories. It would be money returned, fair market
16:24:28 21 value of property, and the value of services rendered.

16:24:32 22 MR. JUPITER: Yes, Your Honor.

16:24:33 23 THE COURT: All right.

16:24:34 24 MR. JUPITER: So, Your Honor, with respect to
16:24:36 25 the government's argument --

16:24:37 1 THE COURT: And how would you calculate the
16:24:39 2 value of the services rendered?

16:24:42 3 MR. JUPITER: I would calculate it by the
16:24:45 4 salary that she was, the salary that the VING placed
16:24:51 5 on -- apprised her value to be -- apprised her work to
16:24:55 6 be, which is the salary she was given.

16:24:59 7 THE COURT: All right.

16:25:02 8 MR. JUPITER: So if the government contends --
16:25:03 9 if the Court accepts that the \$90,000 was paid in
16:25:06 10 salary, the \$90,000 was the fair market value of the
16:25:12 11 services that were rendered, the 90,000 and change.

16:25:21 12 THE COURT: Okay. Thank you, Attorney
16:25:22 13 Jupiter.

16:25:23 14 Is that it for your objections? Any others, or do
16:25:26 15 they all fall under the same category?

16:25:26 16 MR. JUPITER: They all fall under the same
16:25:28 17 category.

16:25:28 18 THE COURT: Okay. Very well. Before the Court
16:25:29 19 is the objection for the defense with respect to the
16:25:32 20 loss calculation.

16:25:32 21 This is not an easy issue. There is no question
16:25:39 22 that the Guidelines contemplate for this type of offense
16:25:44 23 that the Court has to undertake some sort of loss
16:25:47 24 calculation.

16:25:48 25 The Court is not persuaded that the loss

16:25:51 1 calculation determination is as the government suggests.
16:25:56 2 Indeed, if the Court were to do that, then the beginning
16:26:01 3 and the end of the undertaking would be just look at the
16:26:04 4 amount of money received by the defendant.

16:26:10 5 While that's an easy way to come to a loss
16:26:12 6 calculation, the Court doesn't feel that it
16:26:16 7 appropriately contemplates what the Sentencing
16:26:20 8 Guidelines require, what the case law suggests that the
16:26:23 9 Court ought to do. There ought to be something more.

16:26:26 10 And the Third Circuit, there aren't many wage cases
16:26:31 11 that address this issue, but there are enough cases that
16:26:33 12 suggest that it is not the, just a blanket look at the
16:26:39 13 salary or the thing received; the Court has to consider
16:26:41 14 those offsets.

16:26:44 15 And in this case it is difficult, because the
16:26:50 16 testimony, as the Court recalls it, is that Ms. Morales
16:26:53 17 performed services for the Virgin Islands National
16:26:57 18 Guard. They were well-received and she was
16:27:01 19 well-regarded. At the same time, she performed services
16:27:04 20 for MPSC, they were well-received and she was
16:27:09 21 well-regarded.

16:27:09 22 The problem for Ms. Morales, however, and the thing
16:27:12 23 that brings this loss calculation before the Court and
16:27:21 24 that makes it fairly difficult, is the record indicates
16:27:24 25 that she was to be working for two employers at the same

16:27:31 1 time, that is, 9:00 to 5:00.

16:27:38 2 And significantly the Court is not persuaded that a
16:27:47 3 person can provide 40 hours to two separate employers at
16:27:51 4 the same 40-hour period. Mathematically, it's just not
16:27:57 5 possible.

16:27:59 6 The Court is to come up with a reasonable estimate
16:28:01 7 of the loss. It does not require mathematical
16:28:05 8 precision. In some cases, at least one that the Court
16:28:08 9 recalls from the Third Circuit, the government, to meet
16:28:11 10 its burden -- since the burden is on the government and
16:28:14 11 always on the government when it comes to sentencing,
16:28:16 12 and by a preponderance of the evidence -- in some cases
16:28:19 13 the government has undertaken a survey, in some cases
16:28:23 14 the government has undertaken a little bit more, to
16:28:29 15 determine the value of the services rendered or the
16:28:32 16 value of the benefit, and again, to determine whether
16:28:37 17 there's an appropriate offset.

16:28:39 18 The Court found a case where circumstances similar
16:28:43 19 to those as Ms. Morales occurred, and that's United
16:28:50 20 States versus Burns. It's not in our circuit. It's in
16:28:53 21 the Second Circuit. But in that case Mr. Burns received
16:28:58 22 payments from the government. At the same time, he was
16:29:04 23 quite resourceful, it seems, and enrolled at Harvard
16:29:08 24 University. He couldn't do both at the same time.

16:29:12 25 Like Ms. Morales, Mr. Burns received, was

16:29:16 1 well-regarded and claims that he fulfilled all the
16:29:19 2 obligations of his employment. And the conclusion was
16:29:22 3 that you can't do two things for two masters for the
16:29:27 4 same time period.

16:29:29 5 And the Court in that case was able to subtract the
16:29:34 6 amount of hours that the defendant spent at Harvard and
16:29:40 7 offset that from the loss calculation.

16:29:48 8 In this case, where you have identical hours, it's
16:29:52 9 very difficult. But the Court doesn't feel that means
16:29:56 10 we take the easy route. The Court, given the evidence
16:30:03 11 adduced during the course of the trial and the work
16:30:06 12 performed for each entity, the Court is more inclined to
16:30:09 13 apply a 50 percent reduction to the loss calculation,
16:30:15 14 since Ms. Morales worked for two entities over the same
16:30:20 15 period of time, each of which highly regarded her
16:30:24 16 services and each of which acknowledged that she did
16:30:27 17 indeed perform services.

16:30:30 18 So it is not mathematically precise. I don't
16:30:34 19 believe the case requires that it be mathematically
16:30:37 20 precise. The Court has to give a reasonable estimate,
16:30:39 21 and that is the best estimate that the Court can come
16:30:42 22 to.

16:30:42 23 So for loss purposes, the Court will assign a loss
16:30:46 24 value of \$45,000. That is based on the 90,000 that she
16:30:52 25 received over the period. So that is a 45,000 loss

16:31:00 1 amount, which is in excess of 40,000 under 2B1.1, but
16:31:11 2 less than 95,000.

16:31:14 3 So the Court will add 6, which I don't think
16:31:21 4 changes the calculation at the end. But for loss
16:31:25 5 purposes, the loss is reduced by 50 percent.

16:31:30 6 All right. Attorney Jupiter, do you wish to
16:31:32 7 allocute?

16:31:33 8 MR. JUPITER: Your Honor, in light of the
16:31:35 9 Court's ruling, first of all, obviously we reserve our
16:31:40 10 objection. But, Your Honor, we also believe
16:31:44 11 paragraph -- how is that going to affect paragraph 60
16:31:49 12 with regards to restitution? We object to the 90,000.

16:31:52 13 THE COURT: No, right -- let me be clear.

16:31:55 14 The amount of loss, an amount that needs to be the
16:31:59 15 calculated as restitution would be 45,000. That's how
16:32:03 16 it would affect restitution.

16:32:07 17 MR. JUPITER: Okay, Your Honor. We ask that
16:32:08 18 that be changed in the presentence report.

16:32:10 19 THE COURT: Yes. That's paragraph 6-0,
16:32:13 20 correct?

16:32:13 21 MR. JUPITER: Yes, that was paragraph 60, 6-0.

16:32:34 22 THE COURT: That would be actually -- for loss
16:32:36 23 purposes, so the Court is clear, the Court is halving
16:32:39 24 the government's, so it would be 45,426. That would be
16:32:46 25 the loss amount in the respective loss paragraphs and in

16:32:48 1 the restitution paragraph.

16:32:51 2 Go ahead, Attorney Jupiter. You can allocute.

16:32:54 3 ALLOCUTION ON BEHALF OF THE DEFENDANT

16:32:54 4 MR. JUPITER: Thank you, Your Honor.

16:32:56 5 Your Honor, as we tried to illuminate in our
16:33:01 6 sentencing memorandum, Ms. Morales did not only do an
16:33:06 7 exemplary job, as the Court is remarking, on the
16:33:11 8 testimony provided by both her supervisors and peers,
16:33:15 9 but I think we tried to show, not only through our
16:33:19 10 sentencing memorandum, but through the many letters of,
16:33:23 11 the commendations that Ms. Morales has many years, not
16:33:25 12 only a commendable military service, but she has many
16:33:30 13 years of mentoring young women in the Virgin Islands to
16:33:35 14 pursue careers.

16:33:38 15 She has a long career of providing a service to the
16:33:42 16 community. She has a long career of providing
16:33:47 17 professionalism every place where she has gone. She has
16:33:52 18 received service medals.

16:33:55 19 She has constantly strived throughout her life to
16:34:01 20 continue learning, even to this day, even while these
16:34:05 21 charges were pending, this prosecution was pending.
16:34:08 22 After relocating to Maryland, she has enrolled and went
16:34:11 23 back to school, and in six months she is going to, if --
16:34:18 24 hopefully receive another master's degree.

16:34:22 25 And it's not a matter of someone who goes to school

16:34:27 1 or someone who is educated necessarily needs a break.
16:34:33 2 It is a question of character, I think, that the Court
16:34:35 3 is looking at under the 3553 factors, and how the Court
16:34:40 4 balances what is needed in this case or what the Court
16:34:43 5 must consider along with the nature and circumstances of
16:34:48 6 the offense.

16:34:50 7 I think that this case represents something a bit
16:34:56 8 different from what we usually see in the typical fraud
16:34:59 9 case. The typical fraud case is someone who is trying
16:35:03 10 to get something for nothing.

16:35:08 11 Now we respect the jury's verdict and we understand
16:35:10 12 the government's theory and the government's -- and the
16:35:14 13 government's proof.

16:35:14 14 We are going to appeal this case, but nevertheless,
16:35:17 15 even under the government's theory, this was not a
16:35:20 16 matter of making misrepresentations for the purposes of
16:35:27 17 getting something for nothing.

16:35:29 18 Under the government's theory, there were
16:35:31 19 misrepresentations that were made, there were rules that
16:35:33 20 were not followed. But there was not an indication that
16:35:38 21 Ms. Morales intended to take anything from the National
16:35:42 22 Guard that she did not earn. And I think that was the
16:35:46 23 undisputed testimony at trial.

16:35:50 24 And the Court makes reference, and I understand, to
16:35:53 25 the fact that there were time sheets that were submitted

16:35:57 1 for two entities. But the issue of when she performed
16:36:01 2 the work, if the Court were looking at it as to not when
16:36:06 3 the work was performed, but whether in fact she did the
16:36:09 4 job, I don't think that there's any dispute, and I think
16:36:14 5 the Court is to some extent recognizing that.

16:36:19 6 And if we look at the testimony, not only her
16:36:23 7 superior, General Lewis, but also others who -- in the
16:36:28 8 same entity who talked about her working the long hours
16:36:31 9 that she did, and her own testimony, I don't think was,
16:36:36 10 to some extent in terms of what she did over the
16:36:38 11 weekends and what she did and how late she would work at
16:36:41 12 night.

16:36:42 13 And it's also reflected in the letters, in the
16:36:46 14 medals, in the commendations that we submitted as
16:36:50 15 attachments in this case over and over again. And even
16:36:56 16 letters from government, at least one government
16:37:04 17 witness, indications of her getting a pay raise, showing
16:37:08 18 her accomplishments, providing service to the service
16:37:11 19 members who were returning after deployment.

16:37:16 20 We see the letters from her mentees, her proteges,
16:37:20 21 we see the letters from family members. And we also,
16:37:25 22 while we don't want to make a spectacle of it,
16:37:33 23 Ms. Morales has shared in her pleadings things that she
16:37:35 24 has not necessarily shared with everyone. But she has
16:37:42 25 struggled and, in her life, and starting out as a young

16:37:46 1 girl who was not really sure what she wanted to do, and
16:37:49 2 used the military as a springing board, and took what
16:37:53 3 she learned there, learned how to be a professional, and
16:37:57 4 spread that to others in the community.

16:38:01 5 She has a family. She was married twice to
16:38:05 6 Mr. Pedro Morales. He explains how proud -- of many of
16:38:10 7 the proud moments that he shared with her, both when
16:38:14 8 they both served in the National Guard together and
16:38:18 9 while he was married to her, and they remain the best of
16:38:21 10 friends now.

16:38:23 11 Now, in terms of deterrence in a case like this,
16:38:26 12 Your Honor, this is, I believe, in the government's
16:38:30 13 view, an economic crime. This was not a crime certainly
16:38:36 14 that Ms. Morales engaged in to hurt anyone. And the
16:38:42 15 Court can certainly, if in fact it was for, as the
16:38:48 16 government alleges, for economic gain, and certainly we
16:38:52 17 all want to be paid for the work that we do, and
16:38:54 18 certainly in this case Ms. Morales was paid, the Court
16:39:01 19 can deter people who commit these type of offenses and
16:39:05 20 send a message out to the public that you would be hurt
16:39:10 21 economically. The Court can impose fines.

16:39:15 22 The Court can look at the fact that Ms. Morales has
16:39:18 23 this exemplary -- I just -- it's been a long time since
16:39:23 24 I've been before the Court with someone who has this
16:39:26 25 record of community service, and impose not only that

16:39:28 1 she continue to work, but that she work for free, that
16:39:32 2 she continue, that she be required to spend many hours,
16:39:38 3 hundreds of hours, providing her services to the
16:39:41 4 community.

16:39:43 5 And, Your Honor, as stated in Gall versus United
16:39:48 6 States, probation is not a free ride. It is a restraint
16:39:53 7 on liberty --

16:39:55 8 THE COURT: Level C probation isn't available,
16:39:59 9 is it?

16:40:00 10 MR. JUPITER: Your Honor, we're asking for a
16:40:02 11 variance from the Guidelines. In Zone C, the Court can
16:40:07 12 impose a sentence of incarceration -- Your Honor,
16:40:11 13 probation is not, as a Guideline sentence, you're
16:40:15 14 correct, Your Honor.

16:40:16 15 But the Court can give a mixed sentence by, for
16:40:22 16 instance, if the Court were going to give a Guideline
16:40:26 17 sentence, the Court can impose a sentence of 12 months,
16:40:31 18 but -- actually impose a sentence of 6 months
16:40:33 19 imprisonment and impose supervised release, with
16:40:37 20 6 months being in -- served in home detention.

16:40:43 21 So the Court can substitute up to half of the
16:40:47 22 sentence with either home incarceration or community
16:40:50 23 incarceration.

16:41:02 24 So, Your Honor -- and I think that goes to the
16:41:05 25 other factor in the Guidelines, in terms of the types of

16:41:08 1 sentences.

16:41:09 2 Ms. Morales is not a follower. She is a leader.
16:41:13 3 She has no prior criminal history. She's 55 years old
16:41:20 4 and has an exemplary record to the St. Croix community,
16:41:26 5 as well as to the Washington, DC, metropolitan community
16:41:31 6 that she lives in now.

16:41:33 7 For these reasons, Your Honor, we would ask that
16:41:35 8 the Court vary from the Guideline only slightly.
16:41:38 9 Because I think in order to give a sentence of probation
16:41:41 10 the Court would only be varying by about two levels to
16:41:45 11 go into Zone B, and the Court could in fact impose a
16:41:49 12 sentence in Zone B, which she is not in right now.

16:41:54 13 But the Court could impose a sentence of probation
16:41:56 14 with home detention. And we think that would not only
16:41:59 15 serve the community better, it would deter this type of
16:42:03 16 conduct.

16:42:03 17 The Court can impose a fine and the Court can
16:42:06 18 impose that she work for free with community service,
16:42:11 19 and that would certainly be much more constructive in
16:42:15 20 this case. And it would allow her to gain the education
16:42:18 21 that she has already -- educational achievements that
16:42:22 22 she has already started a few years ago and is about to
16:42:26 23 complete in six months.

16:42:34 24 THE COURT: Okay. Thank you, Attorney Jupiter.

16:42:37 25 Does your client wish to make a statement?

16:42:40 1 MR. JUPITER: Yes, Your Honor.

16:42:40 2

16:42:47 3 ALLOCUTION BY THE DEFENDANT

16:42:47 4 THE DEFENDANT: Good afternoon, Your Honor.

16:42:48 5 THE COURT: Good afternoon.

16:42:49 6 THE DEFENDANT: I spent 21 years in the Virgin
16:42:53 7 Islands National Guard, and became known for my
16:42:56 8 integrity and tireless worth ethic.

16:42:59 9 The work I completed as a civilian technician and
16:43:03 10 as a contractor was substantiated by both the Virgin
16:43:07 11 Islands National Guard and the Military Personnel
16:43:13 12 Service Corp.

16:43:13 13 I regularly worked 12 to 14 hours a day, and I
16:43:18 14 conducted briefing to service members on the weekends.

16:43:20 15 I dedicated my weekends to my work with the
16:43:24 16 Military Personnel Services Corp, and was responsible
16:43:28 17 for safeguarding the employment rights for our service
16:43:31 18 members returning home from deployment overseas.

16:43:34 19 It only made sense to conduct the briefings with
16:43:38 20 members of our military on the weekends, since they
16:43:42 21 mostly held positions for which they had to report at
16:43:48 22 9:00 to 5:00 or 8:00 to 5:00, as did their spouses who
16:43:53 23 were also briefed about benefits and entitlements.

16:43:59 24 Fast-forward to the here and now. I served the
16:44:02 25 community in Washington, DC, by doing pro bono work for

16:44:08 1 two youth organizations, DC Scores and the Latin America
16:44:14 2 Youth Council of Washington, DC.

16:44:16 3 I have always believed in growing, learning and
16:44:18 4 continuing my education. I am six months away from
16:44:22 5 earning a second master's degree, and will graduate with
16:44:25 6 an MBA from George Mason University in May of 2016.
16:44:31 7 Currently my GPA is 3.6.

16:44:34 8 I feel that I have been a productive person, and I
16:44:38 9 offer that I can do so much more.

16:44:41 10 I respect the decision of the jury and I
16:44:44 11 respectfully ask that if His Honor is to impose further
16:44:50 12 measures, that you allow me to be a part of the solution
16:44:54 13 by allowing me to contribute in another way, by
16:44:58 14 educating others about the pitfalls of defense
16:45:02 15 contracts, and the potential for conflicts of interest.

16:45:07 16 Recently I have been following the story of Huma
16:45:12 17 Abedin. While working for Former Secretary Clinton as
16:45:15 18 deputy chief of staff at the State Department, she
16:45:19 19 earned \$135,000 as a federal employee, and also earned
16:45:28 20 \$355,000 as a contractor the Teneo Corporation.

16:45:32 21 Though she was a subject of investigation, the
16:45:35 22 Justice Department determined that they were not going
16:45:37 23 to pursue this issue.

16:45:41 24 I am not Huma Abedin. However, conducting these
16:45:45 25 briefings to other federal employees would allow me to

16:45:48 1 be a part of the solution and to contribute in another
16:45:50 2 way by ensuring that this doesn't happen to anyone else.

16:45:56 3 Because you subject yourself to criminal
16:45:58 4 prosecution, and it is devastating. Even before the
16:46:04 5 trial takes place, you lose your freedom of movement,
16:46:07 6 your name is in the news, it tarnishes your reputation,
16:46:12 7 and your family is grossly affected.

16:46:15 8 I ask the Court for probation, community service or
16:46:19 9 any other sanction that Your Honor may deem
16:46:23 10 appropriate.

16:46:23 11 Thank you for this opportunity to address the
16:46:27 12 Court, and I ask for leniency on the Court's behalf.

16:46:33 13 THE COURT: Thank you, Ms. Morales.

16:46:36 14 Attorney Potter.

16:46:45 15 ALLOCUTION BY THE GOVERNMENT

16:46:45 16 MR. POTTER: Thank you, Judge.

16:46:47 17 Your Honor, Ms. Morales, as she just stated, she
16:46:51 18 has a 3.6 GPA average in her master's program at George
16:46:58 19 Mason University.

16:47:02 20 Now, Judge, many different types of individuals
16:47:06 21 come before you for sentencing, those who have no
16:47:13 22 education and have committed various offenses; and also,
16:47:21 23 Judge, those who are highly educated and also commit
16:47:29 24 various criminal offenses. And in appearing before Your
16:47:38 25 Honor, I know that one of the mantras of this Court is

16:47:45 1 that we are fair to everyone and we treat everyone the
16:47:52 2 same.

16:47:54 3 Now, because someone has -- someone is highly
16:47:59 4 educated, is successful in their endeavors and in their
16:48:07 5 employment, and live life better than most who come
16:48:11 6 before this Court, they still are to be treated the same
16:48:20 7 as anyone else.

16:48:23 8 Ms. Morales has not indicated that she made a
16:48:30 9 mistake, committed error. She has taken -- appears to
16:48:40 10 have taken no responsibility for her fraudulent
16:48:49 11 conduct.

16:48:53 12 A jury of her peers heard this case. Ms. Morales
16:48:57 13 took the witness stand. She spoke about her employment
16:49:02 14 with the National Guard. She spoke of her employment
16:49:06 15 with the MPSC.

16:49:10 16 And one of the things that Ms. Morales attempted to
16:49:13 17 say when she was on the witness stand was that she was
16:49:18 18 an independent contractor, meaning, in the context of
16:49:23 19 this case, she's an independent contractor. She sets
16:49:28 20 her own hours. She gets the job done whenever and
16:49:35 21 however she could get the job done. 8:00 to 5:00,
16:49:38 22 Monday through Friday does not apply to her.

16:49:44 23 So she references Huma Abedin as if she and Huma
16:49:53 24 Abedin are similarly situated. But I don't know all the
16:49:58 25 facts of Huma Abedin, but maybe Huma Abedin was in fact

16:50:06 1 truly an independent contractor, who was working and
16:50:12 2 doing work for herself.

16:50:17 3 Ms. Morales, at the time of trial, indicated how
16:50:25 4 accomplished she was. She listed all of her
16:50:29 5 accomplishments within and without the Guard. She
16:50:35 6 mentioned that she was the human resource officer for
16:50:39 7 the Guard at some period of time. She mentioned that
16:50:41 8 she had negotiated, I think, employment -- collective
16:50:47 9 bargaining agreements, if my memory serves me correctly.

16:50:51 10 And for all of this, Your Honor, one day
16:50:57 11 Ms. Morales sat and said to herself: I am going to
16:51:08 12 commit a fraud. I am now working for the MPSC. I am
16:51:14 13 going to attempt to get the National Guard to hire me,
16:51:21 14 also full-time. And I am going to pretend, probably for
16:51:26 15 as long as I can get away with it, that I am
16:51:30 16 volunteering for the MPSC, but working full-time for the
16:51:35 17 National Guard.

16:51:36 18 And that is what Ms. Morales did. I think two or
16:51:41 19 three witnesses took the stand and indicated on at least
16:51:48 20 the three occasions where Ms. Morales would indicate to
16:51:50 21 them that, Oh, I am just volunteering for the guard --
16:51:54 22 sorry -- for the MPSC. I am doing volunteer work.

16:51:59 23 If she in fact thought that she was an independent
16:52:02 24 contractor, she would have told them: Oh, no, I'm doing
16:52:06 25 some contract work with the MPSC, and that's why I am

16:52:14 1 here or that's why I'm talking to you.

16:52:17 2 She didn't say that. So she was being deceitful
16:52:21 3 and deceptive.

16:52:22 4 So when she took the stand, Judge, to me it shined
16:52:26 5 the light on Ms. Morales, her many years of
16:52:31 6 accomplishments in the Guard, her good name, her
16:52:38 7 community involvement, it -- a sort of a low cloud hung
16:52:49 8 over her at that point, because she was being deceptive,
16:52:52 9 again, and she was trying to pull one on the jury. And
16:52:57 10 of course, the jury saw right through Ms. Morales.

16:53:04 11 The Guideline range for Ms. Morales is 12 to
16:53:09 12 18 months.

16:53:14 13 Ms. Morales is asking for community confinement.
16:53:19 14 We reject that, Judge. Ms. Morales deserves a Guideline
16:53:28 15 sentence, and we would ask the Court to impose such a
16:53:31 16 sentence.

16:53:31 17 THE COURT: Thank you, Attorney Potter.

16:53:33 18 Will the defendant come to the lectern, please.

16:53:33 19 IMPOSITION OF SENTENCE BY THE COURT

16:53:40 20 THE COURT: Having considered the advisory
16:53:42 21 Guideline range of 12 to 18 months, which is based on an
16:53:45 22 offense level of 13 and a criminal history category of
16:53:50 23 1, as well as the sentencing factors enumerated at
16:53:53 24 Title 18 Section 3553 -- those factors require that the
16:53:58 25 Courts consider several things.

16:54:01 1 For instance, the Court must consider the nature
16:54:02 2 and circumstances of the offense.

16:54:04 3 Here, the Court notes that this is a white-collar
16:54:07 4 offense. That does not mean it is any less
16:54:11 5 objectionable than any other violation of the US Code.
16:54:18 6 And it involved submitting documents and things in order
16:54:28 7 to receive payment for the same time period.

16:54:34 8 That is troubling, because any scheme or artifice
16:54:42 9 to defraud the United States is a serious offense, which
16:54:46 10 the Congress has indicated by the sentencing options
16:54:49 11 available for those types of offenses.

16:54:52 12 The Court has to consider the history and
16:54:54 13 characteristics of the defendant.

16:54:55 14 And here the Court notes that there are no brushes
16:54:58 15 with the law. And there is certainly a wealth of
16:55:07 16 information that indicates that the defendant has
16:55:09 17 acquitted herself well but for this incident.

16:55:15 18 At the same time, the Court is mindful, as the
16:55:20 19 government indicates, that for someone in the
16:55:23 20 defendant's position there is a lot of information that
16:55:28 21 the defendant has at her disposal, and one would
16:55:34 22 certainly expect that the defendant would be certainly
16:55:38 23 cautious in this regard.

16:55:41 24 It's not entirely clear to the Court that that
16:55:43 25 level of caution was something that attended while the

16:55:48 1 defendant undertook the conduct for which she was
16:55:52 2 convicted.

16:55:53 3 The Court has to impose a sentence that will
16:55:57 4 promote respect for the law, deter this type of conduct.
16:56:02 5 And the Court has to impose a sentence that will achieve
16:56:06 6 the objectives of the Sentencing Commission and impose a
16:56:09 7 sentence no more severe than is required to do that.

16:56:12 8 The Court also has to impose a sentence that will
16:56:15 9 achieve parity with similarly-situated individuals.

16:56:21 10 And the Court has reviewed the records of many that
16:56:25 11 have been sentenced for this type of offense, and the
16:56:30 12 Court notes that the sentence imposed is tied very
16:56:34 13 closely to the amount of loss. I suspect that's why
16:56:40 14 there was so much appropriate consideration of the loss
16:56:45 15 amount. But we have had ranges from 130 months,
16:56:52 16 30 months, 37 months, 35 months, 125 months, in this
16:56:57 17 Court.

16:56:58 18 And again, those were for cases that I included
16:57:04 19 amounts that were much larger than that before the Court
16:57:08 20 now, and in some cases a level of planning and
16:57:11 21 organization that included other enhancements.

16:57:16 22 This is not quite at that level, but nonetheless it
16:57:20 23 is a serious offense.

16:57:22 24 So having considered those several factors and
16:57:25 25 pursuant to the Sentencing Reform Act of 1984, it is the

16:57:30 1 judgment of the Court that the defendant, Sherrymae
16:57:34 2 Morales, be committed to the Bureau of Prisons, to be
16:57:39 3 imprisoned for a term of 12 months and 1 day.

16:57:49 4 The Court will make the following recommendations
16:57:51 5 to the Bureau of Prisons:

16:57:52 6 Pursuant to Public Law 108-405, the revised DNA
16:57:56 7 collection requirement under the Justice For All Act,
16:57:58 8 that the defendant submit to DNA collection while
16:58:00 9 incarcerated or at the direction of the U.S. Probation
16:58:03 10 Office.

16:58:04 11 While incarcerated, the defendant shall enroll in
16:58:06 12 some course of study. It can be vocational, college
16:58:09 13 prep or technical.

16:58:10 14 Following her release from imprisonment, the
16:58:12 15 defendant shall be placed on supervised release for a
16:58:14 16 term of three years. While on supervised release, the
16:58:18 17 defendant shall enroll in some course of study. It can
16:58:22 18 be vocational, college prep or technical.

16:58:24 19 Additionally, the defendant, while on supervised
16:58:29 20 release, shall comply with the standard conditions of
16:58:31 21 supervised release as recommended by the US Sentencing
16:58:34 22 Commission, which conditions have been adopted by this
16:58:36 23 Court and will be made a part of the Judgment and
16:58:41 24 Commitment Order.

16:58:41 25 While on supervised release, the defendant shall

16:58:44 1 perform 200 hours of community service. It can be with
16:58:48 2 an entity such as My Brother's Workshop,
16:58:51 3 Catholic Charities, or some similar organization as may
16:58:55 4 be directed by the US Probation Office.

16:58:58 5 Additionally, as a condition of supervised release,
16:59:01 6 the defendant shall pay restitution. The Court will
16:59:06 7 make a restitution order in the amount of \$45,426.

16:59:12 8 The restitution payee shall be the US Virgin
16:59:16 9 Islands National Guard.

16:59:17 10 Payment shall be in monthly installments, as may be
16:59:20 11 determined by the US Probation Office.

16:59:23 12 The defendant shall provide the Probation Office
16:59:25 13 with her personal, business, financial information as
16:59:29 14 may be requested.

16:59:34 15 The defendant, while on supervised release, shall
16:59:36 16 not commit another federal, state, or local offense.

16:59:41 17 The defendant -- the Court finds the defendant does
16:59:44 18 not have the financial ability to pay a fine, the costs
16:59:46 19 of imprisonment or costs of supervision. Therefore,
16:59:49 20 such fine and fees are waived.

16:59:51 21 It is further ordered that the defendant shall pay
16:59:53 22 a special assessment in the amount of \$2,100, which is
16:59:59 23 due and payable immediately.

17:00:17 24 Sherrymae Morales, you've been sentenced on your
17:00:20 25 counts of conviction. It is important that you are

17:00:22 1 aware that you have 14 days to appeal your sentence.
17:00:25 2 You may do so through your attorney. If for some reason
17:00:28 3 you are unable to do that through your attorney, you may
17:00:30 4 contact the Clerk's Office and an appeal will be noted
17:00:34 5 for you.

17:00:35 6 I note the sentence is not quite what your attorney
17:00:39 7 recommended, but it is not the most severe sentence
17:00:43 8 under the statute or under the Guideline. But I think,
17:00:49 9 as the Court has to do in every sentence, the Court has
17:00:52 10 to weigh those several factors that I outlined.

17:00:55 11 And I think there is certainly more to the story
17:01:01 12 than this event. I think, as your attorney points out,
17:01:05 13 I hope that you'll reflect on where you are now and
17:01:09 14 certainly make every effort to avoid this sort of
17:01:15 15 circumstance in the future.

17:01:16 16 Let me add one thing to the community service order
17:01:23 17 portion of the sentence. The 200 hours, I indicated may
17:01:30 18 be fulfilled with some organization such as the Catholic
17:01:35 19 Charities or My Brother's Workshop. It can also be
17:01:42 20 fulfilled, and the Court will require, that at least
17:01:48 21 50 hours of that time be used to address and lecture
17:01:51 22 others who may be in a position or who need some sort of
17:01:55 23 guidance in avoiding this sort of pitfall.

17:02:04 24 The defendant is remanded to the custody of the
17:02:06 25 United States Marshal's Service pending her designation.

17:02:10 1 MR. JUPITER: May I be heard on that, Your
17:02:13 2 Honor?

17:02:14 3 THE COURT: Yes.

17:02:14 4 FURTHER PROCEEDINGS

17:02:14 5 MR. JUPITER: Your Honor, we did file a motion
17:02:16 6 today for release pending appeal, in the contingency
17:02:22 7 that the Court did sentence, as the Court has sentenced,
17:02:25 8 Ms. Morales to custody.

17:02:26 9 We -- and also in light of the rulings that the
17:02:31 10 Court made today with the loss amount, Your Honor,
17:02:36 11 18 USC section 3143(b)(1), it provides -- I'm not going
17:02:43 12 to read the whole statute, but it provides for the
17:02:46 13 release of the person pending appeal, if the judicial
17:02:49 14 officer finds, and the first prong of it is clear and
17:02:53 15 convincing evidence that the person is not likely to
17:02:58 16 flee, pose a danger, the appeal is not for purposes of
17:03:02 17 delay and will result in reversal or -- Your Honor, I
17:03:07 18 think the strongest argument here -- reduce sentence to
17:03:11 19 a term of imprisonment less than the total of time
17:03:14 20 already served, plus the expected duration of the
17:03:17 21 appeals process.

17:03:19 22 Your Honor, Ms. -- if the Court requires remand
17:03:26 23 now, Ms. Morales's appeals process -- we filed a notice
17:03:31 24 of appeal today -- I think is most likely to last over a
17:03:35 25 year, and any appeal would be fruitless.

17:03:42 1 We also believe we made arguments, the standard
17:03:46 2 that the Court needs to look at with regards to the
17:03:48 3 substantial issue is not necessarily that the Court
17:03:50 4 believes it's wrong, but that there is a novel question
17:03:55 5 that can be -- that will be presented by the Court of
17:03:58 6 Appeals, and particularly with regard to this loss
17:04:03 7 amount and the new, and the determinations with regard
17:04:09 8 to whether or not I guess the Court had to make a
17:04:13 9 determination today, and I think the Court will admit
17:04:16 10 that there was very little case law, Third Circuit case
17:04:19 11 law on this issue. So I do think it does present a
17:04:22 12 novel issue.

17:04:24 13 And Ms. Morales, as we put in our motion, does not
17:04:28 14 present any type of a flight risk. All her family is
17:04:32 15 both here and in Washington, DC. She has been on
17:04:36 16 trial -- on pretrial release. She has no conditions
17:04:40 17 violated. She has -- and I think the record speaks for
17:04:44 18 itself with regard to this, there's no danger of
17:04:47 19 fleeing, no danger of flight.

17:04:51 20 So considering that and any appeal that she may win
17:04:55 21 will be fruitless, because by the time it would have
17:04:59 22 been resolved she would have served the sentence, we
17:05:03 23 would ask that she be allowed to remain on her current
17:05:06 24 bond.

17:05:07 25 Or if the Court wants some security, her

17:05:10 1 ex-husband, Pedro Morales, who lives here in St. Croix,
17:05:14 2 is willing to post his house, that he owns without any
17:05:18 3 lien on it. He has property here that has equity of
17:05:27 4 \$150,000 in it. So we would ask that be taken into
17:05:30 5 consideration.

17:05:31 6 In the alternative, Your Honor, we ask that
17:05:33 7 Ms. Morales, if the Court is not going to do that, that
17:05:36 8 she be allowed to turn herself in to the -- directly to
17:05:40 9 the facility where she would be designated.

17:05:44 10 THE COURT: All right. Well, I'll note this --
17:05:46 11 I'll give the government a chance, but the Court is not
17:05:51 12 inclined to have the defendant report to the facility
17:05:57 13 where she may be designated.

17:06:00 14 The other concern that the Court has is that the
17:06:03 15 3143 factors require the Court to make a finding -- this
17:06:09 16 is assuming that the defendant is not a flight risk --
17:06:12 17 that the appeal is not for delay and will result in
17:06:18 18 reversal, order for new trial, a sentence that does not
17:06:23 19 include a term of imprisonment, or a reduced sentence to
17:06:28 20 a term of imprisonment less than the total time already
17:06:32 21 served, plus the expected duration of the appeal
17:06:37 22 process.

17:06:37 23 I don't believe there's been any time served at
17:06:39 24 this point. Is that correct?

17:06:42 25 MR. JUPITER: Well, I think that any time

17:06:43 1 she's -- she's been arrested, so I think there's one day
17:06:47 2 that she should be credited -- one day; and she should
17:06:51 3 be credited for all the days that she's had to come to
17:06:54 4 court. That's -- I think the Court has discretion to do
17:06:56 5 that.

17:06:57 6 THE COURT: Days coming to court are for speedy
17:07:00 7 trial purposes, not for imprisonment purposes. I don't
17:07:04 8 believe they count for imprisonment purposes.

17:07:07 9 MR. JUPITER: The Court has discretion to find
17:07:10 10 that days that she was required to come to court could
17:07:14 11 be credited.

17:07:15 12 But, Your Honor, in terms of her actually -- other
17:07:18 13 than her being taken into custody, just for the purposes
17:07:21 14 of arrest and being booked, that's one day. But
17:07:26 15 nevertheless, her entire sentence, if she's remanded
17:07:31 16 today, her entire sentence will be served before her
17:07:35 17 appeal is resolved.

17:07:37 18 So I think that both, all factors are relevant with
17:07:44 19 regard to whether or not -- the whole point of it is, is
17:07:50 20 that, is this situation where someone should be able to,
17:07:54 21 should be able to enjoy the benefits of their appeal in
17:07:59 22 case -- and particularly in this instance, where the
17:08:02 23 Court is digging into I think relatively new ground.

17:08:09 24 THE COURT: Okay.

17:08:10 25 Attorney Potter?

17:08:10 1 MR. POTTER: Your Honor, we believe that --
17:08:16 2 well, first of all, we object to Ms. Morales remaining
17:08:20 3 out pending appeal. We don't think that there's a basis
17:08:25 4 for it.

17:08:27 5 The second part of 3143(b), there's no, nothing
17:08:33 6 before this Court which would suggest that the jury's
17:08:36 7 verdict would be reversed. I don't know if there are
17:08:40 8 any facts in dispute that will cause an Appeals Court to
17:08:50 9 reverse Ms. Morales's conviction or order a new trial.

17:08:56 10 Ms. Morales is sentenced to 12 months. I don't
17:09:00 11 know that a basis for keeping someone out pending appeal
17:09:04 12 is so that their appeal -- the hearing date for the
17:09:13 13 appeal will occur after the defendant has been released.
17:09:18 14 That's not what the statute requires. It requires some
17:09:23 15 substantial likelihood that a reversal will follow or a
17:09:32 16 new sentence below what she is presently given would be
17:09:36 17 imposed.

17:09:36 18 I don't think that there's anything in the record
17:09:38 19 that suggests that. I think that the Court's sentencing
17:09:44 20 Ms. Morales within the Guideline range is appropriate,
17:09:49 21 and I don't see that there's anything that would
17:09:53 22 suggest -- whether or not this is a novel or not novel
17:09:55 23 argument, the calculation of loss is something that the
17:10:04 24 Appeals Courts give great deference to the trial court
17:10:09 25 judge. Based on that, Judge, there's no basis for

17:10:12 1 Ms. Morales to remain out pending appeal.

17:10:15 2 THE COURT: I appreciate the defense's
17:10:17 3 position. I'm not persuaded by it, though.

17:10:19 4 I think, to think that 3143, in its application
17:10:23 5 under these circumstances, would require the Court to
17:10:26 6 make a finding of several things, or one of several
17:10:35 7 things in the second prong of the 3143 test.

17:10:41 8 And the Court doesn't find that there is a
17:10:48 9 likelihood of a reversal, an order for a new trial, a
17:10:51 10 sentence that does not include a term of imprisonment,
17:10:54 11 or reduced sentence to a term less than the total of the
17:10:57 12 time already served, plus the expected duration of the
17:11:00 13 appeal process.

17:11:04 14 And also, the Court will note that the Court has to
17:11:08 15 maintain parity with similarly-situated defendants. And
17:11:13 16 where there has been no such finding, the Court has not
17:11:17 17 allowed a defendant to remain out pending appeal.

17:11:23 18 So the defendant is remanded.

17:11:26 19 All right. Thank you, Counsel.

17:11:28 20 MR. POTTER: Thank you, Judge.

21 (Court in recess, 5:11 p.m.)

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CERTIFICATE

This document is hereby certified
to be a true and accurate transcript
of the foregoing proceedings.

/s _____
Chandra Kean, RMR
Official Court Reporter

DATE